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ENGROSSED SUBSTITUTE HOUSE BILL 1667

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State of Washington

66th Legislature

2019 Regular Session

By House Appropriations (originally sponsored by Representatives Springer, Walsh, Appleton, Peterson, Smith, and Griffey)

READ FIRST TIME 03/01/19.

1 AN ACT Relating to public records request administration; and  
2 amending RCW 40.14.026, 42.56.570, and 36.22.175; and providing an  
3 effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 **Sec. 1.** RCW 40.14.026 and 2017 c 303 s 6 are each amended to  
6 read as follows:

7 (1) The division of archives and records management in the office  
8 of the secretary of state must establish and administer a competitive  
9 grant program for local agencies to improve technology information  
10 systems for public record retention, management, and disclosure, and  
11 any related training. The division of archives and records management  
12 may use up to six percent of amounts appropriated for the program for  
13 administration of the grant program. (~~The program in this subsection~~  
14 ~~ceases to exist June 30, 2020.~~)

15 (2) Any local agency may apply to the grant program. The division  
16 of archives and records management in the office of the secretary of  
17 state must award grants annually. The division of archives and  
18 records management must consult with the chief information officer to  
19 develop the criteria for grant recipient selection with a preference  
20 given to small local governmental agencies based on the applicant  
21 agency's need and ability to improve its information technology

1 systems for public record retention, management, and disclosure. The  
2 division of archives and records management may award grants for  
3 specific hardware, software, equipment, technology services  
4 management and training needs, indexing for local records and digital  
5 data, and other resources for improving information technology  
6 systems. To the extent possible, information technology systems,  
7 processes, training, and other resources for improving information  
8 technology systems for records retention and distribution may be  
9 replicated and shared with other governmental entities. Grants are  
10 provided for one-time investments and are not an ongoing source of  
11 revenue for operation or management costs. A grantee may not supplant  
12 local funding with grant funding provided by the office of the  
13 secretary of state. (~~The program in this subsection ceases to exist~~  
14 ~~June 30, 2020.~~)

15 (3) The joint legislative audit and review committee must conduct  
16 a review of the attorney general's consultation program and the state  
17 archivist's training services created under section 4, chapter 303,  
18 Laws of 2017, and the local government competitive grant program  
19 created under this section. The review must include:

20 (a) (i) Information on the number of local governments served, the  
21 types of consultation and training provided, and the implementation  
22 of any practices adopted from the attorney general's consultation  
23 program and the state archivist's training services; and

24 (ii) The effectiveness of the consultation program and the  
25 training services in providing assistance for local governments; and

26 (b) (i) Information on the number of local governments that  
27 applied for and participated in the competitive grant program under  
28 this section, the amount of funding awarded through the grant  
29 program, and how such funding was used; and

30 (ii) The effectiveness of the grant program in improving local  
31 government technology information systems for public records  
32 retention, management, disclosure, and training.

33 (4) Each agency shall maintain a log of public records requests  
34 submitted to and processed by the agency, which shall include but not  
35 be limited to the following information for each request: The  
36 identity of the requestor if provided by the requestor, the date the  
37 request was received, the text of the original request, a description  
38 of the records produced in response to the request, a description of  
39 the records redacted or withheld and the reasons therefor, and the  
40 date of the final disposition of the request. The log must be

1 retained by the agency in accordance with the relevant record  
2 retention schedule established under this chapter, and shall be a  
3 public record subject to disclosure under chapter 42.56 RCW.

4 (5) Except as provided under subsection (6) of this section, to  
5 improve best practices for dissemination of public records, each  
6 agency with actual staff and legal costs associated with fulfilling  
7 public records requests of at least one hundred thousand dollars  
8 during the prior fiscal year must, and each agency with such  
9 estimated costs of less than one hundred thousand dollars during the  
10 prior fiscal year may, report to the joint legislative audit and  
11 review committee by July 1st of each subsequent year the following  
12 metrics, measured over the preceding year:

13 ~~(a) ((An identification of leading practices and processes for~~  
14 ~~records management and retention, including technological upgrades,~~  
15 ~~and what percentage of those leading practices and processes were~~  
16 ~~implemented by the agency;~~

17 ~~(b) The average length of time taken to acknowledge receipt of a~~  
18 ~~public records request;~~

19 ~~(c) The proportion of requests where the agency provided the~~  
20 ~~requested records within five days of receipt of the request compared~~  
21 ~~to the proportion of requests where the agency provided an estimate~~  
22 ~~of an anticipated response time beyond five days of receipt of the~~  
23 ~~request;~~

24 ~~(d) A comparison of the agency's average initial estimate~~  
25 ~~provided for full disclosure of responsive records with the actual~~  
26 ~~time when all responsive records were fully disclosed, including~~  
27 ~~whether the agency sent subsequent estimates of an anticipated~~  
28 ~~response time;~~

29 ~~(e))~~ The number of requests where the agency provided the  
30 requested records within five days of receiving the request.

31 (b) The number of requests where the agency provided a time  
32 estimate for providing responsive records beyond five days after  
33 receiving the request.

34 (c) The average and median number of days from receipt of request  
35 to the date the request is closed.

36 (d) The number of requests where the agency formally sought  
37 additional clarification from the requestor;

38 ~~((f))~~ (e) The number of requests denied in full or in part and  
39 the most common reasons for denying requests;

40 ~~((g))~~ (f) The number of requests abandoned by requestors;

1       ~~((h))~~ (g) To the extent the information is known by the agency,  
2 requests by type of requestor, including individuals, law firms,  
3 organizations, insurers, governments, incarcerated persons, the  
4 media, anonymous requestors, current or former employees, and others;

5       ~~((i))~~ (h) Which portion of requests were fulfilled  
6 electronically compared to requests fulfilled by physical records;

7       ~~((j))~~ (i) The number of requests where the agency ~~((was~~  
8 ~~required to scan))~~ scanned physical records electronically to fulfill  
9 disclosure;

10       ~~((k))~~ (j) The total estimated agency staff time spent on each  
11 individual request;

12       ~~((l))~~ (k) The estimated costs incurred by the agency in  
13 fulfilling records requests, including costs for staff compensation  
14 and legal review, and a measure of the average cost per request;

15       ~~((m))~~ (l) The number of claims filed alleging a violation of  
16 chapter 42.56 RCW or other public records statutes in the past year  
17 involving the agency, categorized by type and exemption at issue, if  
18 applicable;

19       ~~((n))~~ (m) The costs incurred by the agency litigating claims  
20 alleging a violation of chapter 42.56 RCW or other public records  
21 statutes in the past year, including any penalties imposed on the  
22 agency;

23       ~~((o))~~ (n) The costs incurred by the agency with managing and  
24 retaining records, including staff compensation and purchases of  
25 equipment, hardware, software, and services to manage and retain  
26 public records ~~((or otherwise assist in the fulfillment of public~~  
27 ~~records requests))~~; and

28       ~~((p))~~ (o) Expenses recovered by the agency from requestors for  
29 fulfilling public records requests, including any customized service  
30 charges ~~((; and~~

31 ~~(q) Measures of requestor satisfaction with agency responses,~~  
32 ~~communication, and processes relating to the fulfillment of public~~  
33 ~~records requests)).~~

34       (6) The joint legislative audit and review committee must consult  
35 with state and local agencies to develop a reporting method and  
36 clearly define standardized metrics in accordance with this section.

37       (7) By December 1, 2019, the joint legislative audit and review  
38 committee must report to the legislature on its findings from the  
39 review, including recommendations on whether the competitive grant  
40 program, the attorney general's consultation program, and the state

1  archivist's training services should continue or be allowed to  
2  expire.

3       **Sec. 2.** RCW 42.56.570 and 2017 c 303 s 4 are each amended to  
4  read as follows:

5       (1) The attorney general's office shall publish, and update when  
6  appropriate, a pamphlet, written in plain language, explaining this  
7  chapter.

8       (2) The attorney general, by February 1, 2006, shall adopt by  
9  rule advisory model rules for state and local agencies, as defined in  
10 RCW 42.56.010, addressing the following subjects:

11       (a) Providing fullest assistance to requestors;

12       (b) Fulfilling large requests in the most efficient manner;

13       (c) Fulfilling requests for electronic records; and

14       (d) Any other issues pertaining to public disclosure as  
15  determined by the attorney general.

16       (3) The attorney general, in his or her discretion, may from time  
17  to time revise the model (~~(rule[s])~~) rules.

18       (4) Local agencies should consult the advisory model rules when  
19  establishing local ordinances for compliance with the requirements  
20  and responsibilities of this chapter.

21       (5) (~~(Until June 30, 2020,)~~) The attorney general must establish  
22  a consultation program to provide information for developing best  
23  practices for local agencies requesting assistance in compliance with  
24  this chapter including, but not limited to: Responding to records  
25  requests, seeking additional public and private resources for  
26  developing and updating technology information services, and  
27  mitigating liability and costs of compliance. The attorney general  
28  may develop the program in conjunction with the advisory model rule  
29  and may collaborate with the chief information officer, the state  
30  archivist, and other relevant agencies and organizations in  
31  developing and managing the program. (~~(The program in this subsection~~  
32 ~~ceases to exist June 30, 2020.)~~)

33       (6) (~~(Until June 30, 2020,)~~) The state archivist must offer and  
34  provide consultation and training services for local agencies on  
35  improving record retention practices.

36       **Sec. 3.** RCW 36.22.175 and 2011 1st sp.s. c 50 s 931 are each  
37  amended to read as follows:

1 (1)(a) In addition to any other charge authorized by law, the  
2 county auditor shall charge a surcharge of one dollar per instrument  
3 for each document recorded. Revenue generated through this surcharge  
4 shall be transmitted monthly to the state treasurer for deposit in  
5 the local government archives account under RCW 40.14.024. These  
6 funds shall be used solely for providing records scheduling, security  
7 microfilm inspection and storage, archival preservation, cataloging,  
8 and indexing for local government records and digital data and access  
9 to those records and data through the regional branch archives of the  
10 division of archives and records management.

11 (b) The division of archives and records management within the  
12 office of the secretary of state shall provide records management  
13 training for local governments and shall establish a competitive  
14 grant program to solicit and prioritize project proposals from local  
15 governments for potential funding to be paid for by funds from the  
16 auditor surcharge and tax warrant surcharge revenues. Application for  
17 specific projects may be made by local government agencies only. The  
18 state archivist in consultation with the advisory committee  
19 established under RCW 40.14.027 shall adopt rules governing project  
20 eligibility, evaluation, awarding of grants, and other criteria  
21 including requirements for records management training for grant  
22 recipients.

23 (2) The advisory committee established under RCW 40.14.027 shall  
24 review grant proposals and establish a prioritized list of projects  
25 to be considered for funding by January 1st of each even-numbered  
26 year, beginning in 2002. The evaluation of proposals and development  
27 of the prioritized list must be developed through open public  
28 meetings. Funding for projects shall be granted according to the  
29 ranking of each application on the prioritized list and projects will  
30 be funded only to the extent that funds are available. A grant award  
31 may have an effective date other than the date the project is placed  
32 on the prioritized list.

33 (3)(a) In addition to any other surcharge authorized by law, the  
34 county auditor shall charge a surcharge of one dollar per instrument  
35 for every document recorded after January 1, 2002. Revenue generated  
36 through this surcharge shall be transmitted to the state treasurer  
37 monthly for deposit in the local government archives account under  
38 RCW 40.14.024 to be used exclusively for: (i) The construction and  
39 improvement of a specialized regional facility located in eastern  
40 Washington designed to serve the archives, records management, and

1 digital data management needs of local government; and (ii) payment  
2 of the certificate of participation issued for the Washington state  
3 heritage center to the extent there is an excess fund balance in the  
4 account and fees generated under RCW 36.18.010 and 43.07.128 are  
5 insufficient to meet debt service payments on the certificate of  
6 participation.

7 (b) To the extent the facilities are used for the storage and  
8 retrieval of state agency records and digital data, that portion of  
9 the construction of such facilities used for state government records  
10 and data shall be supported by other charges and fees paid by state  
11 agencies and shall not be supported by the surcharge authorized in  
12 this subsection, except that to the extent there is an excess fund  
13 balance in the account and fees generated under RCW 36.18.010 and  
14 43.07.128 are insufficient to meet debt service payments for the  
15 Washington state heritage center, the local government archives  
16 account under RCW 40.14.024 may be used for the Washington state  
17 heritage center.

18 (c) At such time that all debt service from construction of the  
19 specialized regional archive facility located in eastern Washington  
20 has been paid, fifty percent of the surcharge authorized by this  
21 subsection shall be reverted to the centennial document preservation  
22 and modernization account as prescribed in RCW 36.22.170 and fifty  
23 percent of the surcharge authorized by this section shall be reverted  
24 to the state treasurer for deposit in the public records efficiency,  
25 preservation, and access account to serve the archives, records  
26 management, and digital data management needs of local government,  
27 except that the state treasurer shall not revert funds to the  
28 centennial document preservation and modernization account and to the  
29 public records efficiency, preservation, and access account if fees  
30 generated under RCW 36.18.010 and 43.07.128 are insufficient to meet  
31 debt service payments on the Washington state heritage center.

32 (4) In addition to any other surcharge authorized by law, the  
33 county auditor shall charge a surcharge of one dollar per instrument  
34 for every document recorded. Revenue generated through this surcharge  
35 shall be transmitted to the state treasurer monthly for deposit in  
36 the local government archives account under RCW 40.14.024 to be used  
37 exclusively for the competitive grant program in RCW 40.14.026, and  
38 for the attorney general's consultation program and state archivist's  
39 training services authorized in RCW 42.56.570.

1        NEW SECTION.    **Sec. 4.**    Section 3 of this act takes effect June  
2    30, 2020.

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